

**Minutes of the Government Records Council
August 11, 2005 Public Meeting - Open Session**

The meeting was called to order at 9:10 a.m. at the Department of Community Affairs, Room 129, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Ms. Luzzatto called roll call for attendance:

Ayes: Ms. Schonyers, Ms. Tabakin; Mr. Fishman; Mr. Maltese

Nays: None

Abstain: None

Not In Attendance: Ms. Minus-Vincent

Present: Chairman Vincent Maltese, Ms. Robin Tabakin, Mr. Mitchell Fishman Secretary DeAnna Minus-Vincent, Diane Schonyers (designee of Commissioner William Librera, Department of Education), DeAnna Minus-Vincent, (designee of Acting Commissioner Charles A. Richman, Department of Community Affairs) Executive Director Paul Dice, Assistant Executive Director Gloria Luzzatto, Office Manager Marion Davies Case Managers Chris Malloy, Kimberly Gardner, and Colleen McGann, Resource Coordinator Jennifer Arozamena, In-House Counsel, Catherine Starghill, Deputy Attorney General Debra Allen.

The Council met in closed session from 9:15 a.m. to 11:00 a.m.

The Council reconvened in Open Session at 11:00am.

Ms. Luzzatto called roll call for attendance in Open Session:

Ayes: Ms. Schonyers, Ms. Minus-Vincent; Ms. Tabakin; Mr. Fishman; Mr. Maltese

Nays: None

Abstain: None

The Pledge of Allegiance was recited.

Personnel Matter:

Mr. Dice stated that we have extended an offer of employment to Ms. Dara Lownie who will be replacing Ms. Erin Knoedler. Ms. Knoedler will be working with Local Government Services.

Outreaches:

Mr. Dice stated that we 22 outreaches posted for 2004, and 22 for 2005 with a possibility of having reached a goal of 25 for 2005. He continued his discussion on the Outreach program.

Minutes:

Mr. Maltese called for a motion to accept both the Open and Closed Session Minutes for February 2005, March 2005 and April 2005.

A motion was made by Ms Tabakin and seconded by Mr. Fishman. The motion was adopted by roll call:

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

Ms. Luzzatto presented the following cases for Administrative Disposition:

1. Dan Grant v. Montville Township Board of Education (2004-97) – settled in mediation.
2. Joseph Renna v. County of Union (2004-136) – withdrawn.
3. Gerald Jones v. Bergen County (2005-24) – settled in mediation.
4. Frederick Schneider v. Atlantic City Board of Health (2005-73)- no records responsive to the request.
5. Rory Moore v. Old Bridge Township (2005-74) - no records responsive to the request.
6. Rory Moore v. Old Bridge Township (2005-79) – all information responsive to the request was made available and sent to the Complainant.
7. Rory Moore v. Old Bridge Township (2005-81) – no records responsive to the request.
8. Rory Moore v. Old Bridge Township (2005-82) – the Council does not have jurisdiction.
9. Rory Moore v. Old Bridge Township (2005-83) – records responsive to the request were provided.
10. Mark Competello v. City of Hoboken (2005-107) – complaint withdrawn.
11. David Herron v. Montclair Community Pre-K Center (2005-130) – agreement to mediation.
12. Daniel Meaders v. William Paterson University (2005-131) – agreement to mediation.
13. John Painter v. Readington Public Schools (2005-134) – agreement to mediation.
14. Rich Engler v. NJ Department of Environmental Protection (2005-4) – complaint withdrawn.

Gerald Weimer v. Middletown Township (2004-22)

Ms. Starghill reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council close this case without any further action because:

1. The Custodian has supplied the Complainant with all of the documents as required in the Council's Interim Decision dated May 13, 2004;
2. All issues in controversy have been fully settled; and
3. The settlement is consistent with the law.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation as written. A motion was made by Mr. Fishman and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

John Paff v. Division of Consumer Affairs 2004-103

Ms. Starghill reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Ms. Starghill presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council reaffirm its January 13, 2005 Final Decision on the alternative basis mentioned but not addressed in the January 13, 2004 Findings and Recommendations, and not relied upon in the final decision, regarding the requested government records being exempt from disclosure pursuant to N.J.S.A. 47:1A-3(a) because they pertain to investigations in progress and their disclosure would be inimical to public interest.

Mr. Maltese called for a motion to accept the Executive Director's Supplemental Recommendation as written. A motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

Louise Andreaci v. Port Republic School 2004-202

Ms. Gardner reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Ms. Gardner presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council refer this case to the Office of Administrative Law for a hearing to determine the following:

1. What records were requested?
2. Are the records being sought "government records" as defined under N.J.S.A. 47:1A-1.1?
3. When was the records request made?
4. What response was provided to the requestor?
5. When was the response provided?
6. Whether there is a knowing and willful violation of OPRA under the totality of the circumstances with regard to timeliness pursuant to N.J.S.A. 47:1a-5(i)?

Mr. Maltese called for a motion to accept the Executive Director's Recommendation as written. A motion was made by Mr. Fishman and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

John Paff v. Borough of Far Hills 2005-30

Ms. Gardner reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Ms. Gardner presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommends that the Council request the unredacted copy of the August 9, 2004 Executive Session minutes be presented at the September 8, 2005 Government Council Meeting for an *in camera* inspection to determine if the requested information contained in the Executive Session minutes are disclosable in whole, in part, or non-disclosable pursuant to OPRA.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation as written. A motion was made by Ms. Schonyers and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

Rory Moore v. Old Bridge Township 2005-39

Ms. Luzzatto reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Ms. Luzzatto presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Custodian has met the burden of proving that there was no unlawful denial of access and that the Complainant was provided access to all records responsive to his request.
2. The Custodian provided a written response to the November 18, 2004 OPRA request on November 24, 2004 informing the Complainant that the requested records were available. The Complainant acknowledges receipt of the response. Therefore, Custodian's response was timely and in conformity with the provisions of OPRA.

Mr. Maltese called for a motion to accept the Executive Director's Recommendation as written. A motion was made by Mr. Fishman and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

John Paff v. Borough of Somerville 2005-55

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Malloy presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find that:

1. While the Custodian has certified as to the reasons for the documents being withheld, the information provided is insufficient to determine whether the requested documents fall under the exemptions claimed.
2. An *in camera* inspection of the Executive Session minutes for which the Custodian claims an exemption should be conducted.
3. Pursuant to N.J.S.A. 47:1A-5(i), the Custodian should have responded to the Complaint, as soon as possible, but not later than seven business days. While the Custodian did violate N.J.S.A. 47:1A-5(i) and N.J.S.A. 47:1A-5(g), the violation does not rise to a level of knowing and willful violation of OPRA under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director's Recommendations as amended. A motion was made by Ms. Schonyers and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

Daryle Pitts v. NJ Department of Health and Senior Services 2005-70

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Malloy presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find that:

1. The Custodian's violation of N.J.S.A. 47:1A-5(i) and N.J.S.A. 47:1A-5(g) does not rise to a level of a knowing and willful violation of OPRA under the totality of the circumstances.
2. The Custodian has certified that the records responsive to the request do not exist; therefore there was no unlawful denial of access.

Mr. Maltese called for a motion to accept the Executive Director's Recommendations as amended. A motion was made by Ms. Schonyers and seconded by Mr. Fishman. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

Mr. Maltese stated that the following cases would be carried until the September meeting.

Martin O'Shea v. Township of West Milford (2004-207)

Martin O'Shea v. Township of West Milford (2005-31)

Beth Burns v. Borough of Collingswood (2005-68)

Michael DeLuca v. Town of Guttenberg 2005-76

Mr. Malloy reviewed the parties' respective positions and the GRC's analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Mr. Malloy presented the

following recommendations of the Executive Director to the Council.

The Executive Director respectfully recommended that the Council find:

1. The Custodian certified that all documents responsive to the request have been provided (aside from the document that she certifies was “not in the control of the Town of Guttenberg as it was lost.”)
2. Pursuant to N.J.S.A. 47:1A-7 the GRC does not have jurisdiction to perform an audit of records under the control of Records Custodians.

Mr. Maltese suggested that DARM be notified about this Custodian and how they retain records.

Mr. Maltese called for a motion to accept the Executive Director’s Recommendations as written. A motion was made by Ms. Schonyers and seconded by Ms. Minus-Vincent. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

David Mann v. Bergen County Planning & Economic Development 2005-78

Ms. Gardner reviewed the parties’ respective positions and the GRC’s analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Ms. Gardner presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommended that the Council find:

1. The Custodian has certified that the records responsive to the request were released.
2. The Custodian’s violation of N.J.S.A. 47:1A-5(i) and N.J.S.A. 47:1A-5(g) does not rise to the level of a knowing and willful violation of OPRA under the totality of the circumstances.

Mr. Maltese called for a motion to accept the Executive Director’s Recommendations as amended. A motion was made by Mr. Fishman and seconded by Ms. Schonyers. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

Rory Moore v. Township of Old Bridge 2005-80

Ms. Luzzatto reviewed the parties’ respective positions and the GRC’s analysis and issues in the case as set forth in Findings and Recommendations of the Executive Director. Ms. Luzzatto presented the following recommendations of the Executive Director to the Council:

The Executive Director respectfully recommends that the Council find:

1. The Custodian met the burden of proving that the denial of access was proper under OPRA since she provided the Complainant with specific reasons for her inability to fulfill the request and the Complainant provided no clarification.

2. The Custodian provided a written response to the April 21, 2005 OPRA request on April 26, 2005. The Custodian's response was timely and in conformity with the provisions of OPRA.

Mr. Maltese called for a motion to accept the Executive Director's Recommendations as amended. A motion was made by Mr. Fishman and seconded by Ms. Schonyers. The motion was adopted by roll call.

Ayes: Mr. Maltese, Mr. Fishman, Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: None

Joseph Sooy V. Department of Corrections 2004-215

The Council after completing the *in camera* review of the un-redacted "November 18, 2004 e-mail in Closed Session, the Council concluded that the redacted information contained in the requested record was neither "inter-agency or intra-agency advisory, consultative, or deliberative material" or otherwise exempt from disclosure under the Open Public Records Act. N.J.S.A. 47:1A-1 et seq. The Council, therefore, voted unanimously that the requested document be disclosed in its entirety without redactions within ten (10) business days from receipt of the Council's decision. The Custodian is to confirm to Executive Director Paul Dice that said document was released to the Complainant within the specified time period.

Mr. Maltese recused himself from the following case:

Jeffrey Sauter v. Township of Colts Neck 2004-68

The Government Records Council (Council) conducted an *in camera* inspection of the following un-redacted documents for a determination on access in the Complainant's OPRA request:

1. May 22, 2001 grievance filed by a member of the Fire Company against former Fire Chief Piotrowski
2. June 4, 2001 memo from the Township counsel to Executive Fire Council members regarding the May 22, 2001 Grievance
3. June 18, 2001 letter from the Township attorney to the attorney for former Fire Chief Piotrowski
4. June 22, 2001 letter from the Township attorney to the attorney for former Fire Chief Piotrowski.

After completing the *in camera* review of the un-redacted documents listed directly above in Closed Session, the Council concluded by a majority vote that Documents 1, 3 and 4 above are disclosable with the redaction of all information except the name, title and position of the police chief pursuant to N.J.S.A. 47:1A-10 and Executive Order 11, and Document 2 is not disclosable pursuant to N.J.S.A. 47:1A-1.1 under the exemption for attorney-client privilege. The Custodian shall disclose the requested documents 1, 3 and 4 above with appropriate redactions within ten (10) business days from receipt of the Council's decision. The Custodian is to confirm to Executive Director Paul Dice that said document was released to the Complainant within the specified time period.

Mr. Fishman stated that he felt no documents should be disclosed.

Ms. Schonyers called for a motion to accept the Council's Decision to release documents 1, 3 and 4

should be released and document 2 should not be released. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. The motion was adopted by roll call.

Ayes: Ms. Tabakin, Ms. Minus-Vincent, Ms. Schonyers

Nays: Mr. Fishman,

Recused: Mr. Maltese

The Council also considered the July 28, 2005 Certification of the Custodian that stated there are no further documents in the possession of the Colts Neck Fire Department responsive to the request. The Council voted unanimously to accept the certification of the Custodian and finds that there was no unlawful denial of access under the Open Public Records Act.

Reports - None
Communications - None
New Business - None.

Public Statements:

Mr. Martin O'Shea – West Milford, NJ

Mr. O'Shea discussed his concern on his case and the Township of West Milford.

Mr. John Paff - Somerset, NJ

Mr. Paff wanted to clarify if the Custodian of Somerville was being placed on the Matrix. He also asked about the regulations that are being prepared are on the New Jersey Register. Ms. Starghill responded that these are DRAFT regulations and they are still a work in progress.

Ms. Schonyers called for a motion to adjourn. A motion was made by Ms. Minus-Vincent and seconded by Ms. Tabakin. Meeting adjourned by consensus.

Respectfully submitted,



DeAnna Minus-Vincent,
Secretary

Dated: October 28, 2005